

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WISCONSIN

ROGELIO LOPEZ,

Petitioner,

ORDER

v.

08-cv-408-slc

GREGORY GRAMS, Warden,
Columbia Correctional Center,

Respondent.

After the magistrate judge issued his report and recommendation but before this court entered judgment, Rogelio Lopez filed a notice of appeal. In an order entered December 16, 2009, I construed the notice of appeal as raising objections to the report and recommendation, rejected petitioner's arguments, adopted the recommendation that the petition be dismissed and declined to issue petitioner a certificate of appealability. Judgment was entered December 17, 2009.

Although petitioner has not filed a new notice of appeal from the December 16 order, under Fed. R. App. 4(a)(2), his premature notice of appeal is treated as if he filed it after the court entered judgment. Petitioner has not paid the appellate filing fee or filed a request to proceed *in forma pauperis* on appeal, accompanied by a copy of the six-month trust fund account statement from the institution. 28 U.S.C. § 1915(a)(2). (Petitioner paid the five

dollar filing fee in this court, so there is no affidavit of indigency to which this court could now refer).

Petitioner may have until January 11, 2010 either to pay \$455 to the clerk of this court as his appellate filing and docketing fee or to file his motion for leave to proceed *in forma pauperis* on appeal. If petitioner fails to exercise one of these options by this deadline, then this court will deem his appeal abandoned. For petitioner's benefit, I note that I do not intend to certify that his appeal is taken in bad faith.

Entered this 28th day of December, 2009.

BY THE COURT:

/s/

BARBARA B. CRABB
District Judge